

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL KUBRAK
Claimant

BEST BUY STORES LP
Employer

APPEAL 21A-UI-10768-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/07/21
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On April 19, 2021, Daniel Kubrak (claimant) filed an appeal from the April 8, 2021, reference 01, unemployment insurance decision that denied benefits effective February 7, 2021, based upon the determination he was still employed with Best Buy Stores LP (employer) in the same wages and hours as the contract of hire. Therefore, he was not considered able to and available for work. After due notice was issued, a telephone hearing was held on July 2, 2021. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. The claimant's Exhibits A and B were admitted into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective February 7, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer in June 2016, as a part-time Sales Associate. In late 2019, the claimant began working for the employer full-time as a Consultation Agent. He was available to work any day of the week for as many hours as the employer needed.

In the fall of 2020, the claimant returned to college full-time. He told the employer that through the end of 2020, he would only be available to work Friday beginning at noon through Monday each week. At the beginning of 2021, the claimant changed his availability to only Saturday and Sunday for a maximum of 16 to 18 hours. The employer expected that they would schedule him around 16 hours a week; however, the claimant understood his hours would vary.

The claimant filed his claim for unemployment insurance benefits effective February 7, 2021, because he was not being scheduled for 16 hours per week. The base period for the claim begins October 1, 2019 and goes through September 30, 2020, during which he worked

primarily full-time. The claimant reported wages earned each week through May 21, with the exception of two weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work, available for work, and actively and earnestly seeking work as defined in Iowa law effective February 7, 2021. Benefits are denied.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.1A(37)¹ provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.22(2)a provides, in relevant part:

¹ Prior to the 2021 Iowa Code, these definitions were found in section 96.19(38).

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

An individual claiming benefits has the burden to prove that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant earned the wages in his base period by working full-time; however, he is no longer available for full-time employment because he is primarily focused on full-time school. Additionally, the claimant cannot be considered partially unemployed as he is currently working a part-time job with varying hours, which he agreed to when he returned to a part-time position. The claimant

is not considered available for work under the eligibility requirements for unemployment insurance benefits. Accordingly, benefits are denied.

DECISION:

The April 8, 2021, reference 01, unemployment insurance decision is affirmed. The claimant is not able to and available for work effective February 7, 2021. Benefits are denied.



Stephanie R. Callahan
Administrative Law Judge

July 14, 2021
Decision Dated and Mailed

src/kmj